TELEVISION AND RADIO BROADCASTING -

SINGLE SALES FACTOR APPORTIONMENT

SPECIAL REGULATION 5A

The following special rules are established with respect to the allocation and apportionment of income from television and radio broadcasting

- 1) Single Sales Factor Apportionment. For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5), C.R.S. and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
 - a) In General. When a person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to §39-22-303.5, C.R.S. and the regulations issued thereunder by this state, except as modified by this regulation.
 - b) **Business and Nonbusiness Income**. For definitions, regulations, and examples for determining whether income shall be classified as "business" or "nonbusiness" income, see Reg. 39-22-303.5.1A.
 - c) **Definitions**. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.
 - i) "Film" or "film programming" means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays ,stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium.
 - Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.
 - ii) "Radio" or "radio programming" means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium.
 - Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.
 - "Release" or "in release" means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a

film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose.

Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.

- iv) "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.
- v) A "subscriber" to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.
- vi) "Telecast" or "broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.
- vii) "United States" means states and District of Columbia, but does not include the Commonwealth of Puerto Rico or territories and possessions of the United States.

d) Apportionment of Business Income.

i) In General. The taxpayer shall apportion business income using only the sales factor. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year.

ii) The Sales Factor.

- (1) Sales Factor Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts otherwise excluded.
- (2) Sales Factor Numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including but not limited to the following:
 - (a) Gross receipts, including advertising revenue, from television, film, or radio programming in release to or by television and radio stations located in this state.
 - (b) Gross receipts, including advertising revenue, from television, film, or radio programming in release to or by a television station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and

affiliated stations in the case of networks) within the United States.

The audience factor for television or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United States, as reflected in the most current population data published by the U.S. Bureau of Census, for all states which receive the broadcasts.

(c) Gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

If none of the foregoing resources are available, or, if available, none is in form or content sufficient for such purposes, then the audience factor shall be determined by the ratio that the population of this state bears to the population of the United States as reflected in the most current population data published by the U.S. Bureau of Census for all states in which the cable system has subscribers.

(d) The extent that the gross receipts from live television broadcasting, film, or radio programming, as determined pursuant to paragraph 1)d)ii)(2)(b) or (c) include receipts derived from broadcasts to audiences located outside the United States ("foreign-based receipts"), the total gross receipts against which the audience factor shall be applied shall be modified so that such foreign-based receipts are not used to affect the amount of receipts that are to be apportioned to the state. Such modification shall consist of deducting from total receipts, prior to the application thereto of the audience factor, that amount of receipts derived from broadcasts to audiences located outside the United States.

Example: XYZ Television Network Co. has gross receipts from all broadcasting of films of \$1 billion of which a total of

\$200,000,000 was derived from advertising receipts and license fees attributable to releases of its films in foreign television markets and \$800,000,000 attributable to the United States market. Assuming that foreign countries into which its programming has been telecast or sold or licensed for telecast would have jurisdiction to impose their income tax upon XYZ Network Co., then its in-state gross receipts attributable to its telecasting activity would be determined as follows:

\$1,000,000,000 - \$200,000,000 = \$800,000,000

 $$800,000,000 \times (audience factor) = in-state gross receipts$

- (e) Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in §39-22-303.5 C.R.S. and regulations thereunder.
- 2) Alternative Methodologies. If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.